



SUBMITTED VIA E-MAIL to Lauren.Bisnett@water.ca.gov and SGMPS@water.ca.gov

April 1, 2016

California Department of Water Resources
Attn: Lauren Bisnett, Public Affairs Office
PO Box 942836
Sacramento, CA 94236

Subject: Comments regarding DWR's Draft Groundwater Sustainability Plan Emergency Regulations

Dear Ms. Bisnett and others to whom this may concern:

Turlock Irrigation District respectfully submits the following comments on the Department of Water Resources' Draft Groundwater Sustainability Plan Emergency Regulations ("Draft GSP Regulations") as the Department looks to develop Final GSP Emergency Regulations for adoption by the California Water Commission ("Commission").

Throughout the process of drafting these regulations, DWR's Sustainable Groundwater Management team has been thorough and thoughtful in its work, and it has been inclusive of local agencies' such as TID as well as many other stakeholders in the regulation crafting process. We certainly expect that to continue as SGMA implementation continues.

As a member of the San Joaquin Tributaries Authority ("SJTA"), TID has been involved in several stakeholder advisory group meetings with DWR leading to the issuance of the Draft GSP Regulations. TID is grateful for the Department including it in those discussions. I'm confident the meetings have been mutually beneficial to TID and DWR as each of our agencies continue to embrace the goals and requirements of SGMA.

TID supports SJTA's comments

TID is a founding member of the SJTA. The SJTA's mission is to promote sound, environmentally responsible solutions to water supply management within a framework that recognizes the historic rights of its member agencies and the concerns of ratepayers. SJTA has also submitted formal comments on the Draft GSP Regulations. TID agrees wholly with all of SJTA's comments regarding the Draft GSP Regulations, as stated in the SJTA's formal comment letter and SJTA's suggested redline changes to the Draft GSP Regulations.

TID shares SJTA's concerns with the breadth of the Proposed Regulations and their expansion of SGMA requirements. TID agrees with SJTA's remarks that the Draft GSP Regulations are overreaching in some places, too prescriptive at times, and certain sections of the regulations could result in groundwater basins being managed by the state instead of from the local level.

Another TID concern captured in SJTA's comments is that, while SGMA is clear that a single GSP *or* coordinated GSPs covering a (sub)basin are acceptable compliance paths for future groundwater management planning, the Draft GSP Regulations seem to place such a high bar for intrabasin coordination of GSPs that the regulations would result in coordinated GSPs being unachievable due to the coordination requirements of the regulations.

DWR's role as a SGMA regulator

As to DWR's role and as regulator, some commenters at recent Commission meetings have either alluded to or directly questioned DWR's capacity to carry out the regulatory duties of SGMA. Because of its collaboration with the Department, TID believes the California legislature correctly placed the regulatory role of implementing SGMA with DWR.

Structure of this comment letter

TID has separated its comments on the Draft GSP Regulations into two categories; general comments and specific comments, which follow below. Because we understand the tight timeline under which DWR is working to see these regulations adopted by the Commission before the June 2016 statutory deadline set forth in SGMA, we have made every attempt to organize our comments, provide references and, where possible, suggest alternative language.

General comments about the Draft GSP Regulations

In the most general sense, TID cannot overstate the importance of DWR bringing forth Final GSP Regulations to the Commission that truly capture the concept of local control embodied in SGMA and §350.2 of the Draft GSP Regulations. Everywhere possible, the regulations should defer to local groundwater management efforts (i.e. Groundwater Sustainability Agencies designing, developing, adopting and implementing GSPs) as long as (sub)basins are en route to sustainability goals and are avoiding/mitigating undesirable results. In this vein, any Final GSP regulations should avoid unnecessary prescription or top-down management, as both are less effective than locally-driven decisions. Final GSP Regulations should not extend beyond what is authorized by SGMA.

TID is a founding member of the Turlock Groundwater Basin Association ("TGBA"). TID agrees with the points and comments advanced by the TGBA in its comment letter, specifically its recommendation of a guidance document to accompany the Final GSP Regulations. Such a guidance document can help avoid undue prescription in the adopted GSP regulations while allowing an avenue for DWR to offer its insight to local agencies related to GSP design. It is my understanding that this process was used successfully by DWR - and received well by the regulated community - as water agencies updated their Agricultural Water Management Plans in 2015.

Comments related to specific sections of the Draft GSP Regulations

Draft Regulation Reference: Numerous initial references defined in §351 and referenced in subsequent sections

Comment: Generally, several of the definitions in §351 are used with differing capitalizations in subsequent sections of the regulations. For example, §351(u)(1) defines "Adopted Plan" (using capitalization of both words of the term, referencing "Adopted Plan" as a proper noun). However, §355.2(b) refers to "adopted Plan" (only second word capitalized). In the very next section, §355.2(c), a reference to "adopted plan" (no word capitalized) is made.

Discussion: This lack of consistency can lead to confusion and in some instances can modify legal interpretation of sections of the regulations.

Suggestion for DWR: Revisit the definitions that are defined in §351 and the terms' subsequent references in the regulation to achieve consistency of usage. SGMA itself, in Water Code §10721, provides some insight in this area, as all single-word terms are capitalized in the definitions section, and then used consistently in lowercase throughout the remainder of the document. Additionally, all multiple-word terms see only the initial word capitalized in the definitions section of SGMA, however no words within the multiple-word term are capitalized throughout the remainder of the document.

Draft Regulation Reference: §351 (i)

Comment: The definition of "Coordinating agency" seemingly fails to accommodate for differences of opinion that could emerge from GSA formation within (sub)basins.

Discussion: The definition describes how a coordinating agency will represent "two or more Agencies or Plans for a basin". However, it is possible that (sub)basins will emerge from SGMA with multiple GSAs and possibly multiple GSPs, resulting in (sub)basin dynamics that preclude the selection of a single coordinating agency to be the sole point of contact with DWR. Even in the event that GSA formation and GSP development/adoption processes are amicable in (sub)basins, it is entirely possible that local agencies will be unwilling to select a *single* GSA as the *sole* source of communication with the Department. Traditionally, local agencies lack faith in other local agencies' capacities to speaking entirely on their behalf, even when trust is not a concern. The definition needs to be revised to 1) enlarge the basin contingent communicating to the Department, and 2) give local agencies full control of the selection of this contact source.

Suggestion for DWR: amend the definition to read: "'Coordinating group" refers to a group of individuals, as stipulated in a basin coordination agreement, who are mutually selected by groundwater

sustainability agencies within a basin. The coordinating group will collectively serve as the sole point of contact with the Department.”

Draft Regulation Reference: 345.10 (e)

Comment: To state a “communications plan adopted by the Agency” implies a broader undertaking than SGMA implies and DWR intends.

Discussion: The section implies an additional communications planning effort (specifically a communications *plan*) is mandated to complement any GSP efforts, rather simply comprising *a section* within an adopted GSP that contains the required elements of which this specific section of the regulations sets forth.

Suggestion for DWR: amend §345.10 (e) to read “A communications section of the Plan that includes the following:”

Draft Regulation Reference: §354.16

Comment: TID believes that DWR's Final GSP Regulations must continue to embody the letter of SGMA memorialized in Water Code §10727.2 (b)(4).

Discussion: The regulations must continue to allow GSAs to have permissive flexibility related to addressing undesirable results occurring prior to January 1, 2015 as GSAs begin to design and implement GSPs. The Draft GSP Regulations adequately address this comment when referencing January 1, 2015 as the time baseline for reporting basin conditions. Any attempts to bolster the Draft GSP Regulations to require GSPs to address undesirable results occurring prior to January 1, 2015 are contrary to law.

Draft Regulation Reference: §354.18 (b)(3)(C)

Comment: While this section addresses “future water supply uncertainty associated with historical surface water supply reliability” and much more related to water budgets, this section, and the remainder of the Draft GSP Regulations fails to imply or address how Plans would be reviewed by DWR in the event that separate regulatory processes or court decisions affect surface water reliability.

Discussion: For example, TID has managed surface water and groundwater conjunctively within the Turlock Subbasin for the past 90 years. Planning and budgeting for hydrological variances that could affect surface water reliability has become commonplace. However, the Turlock Subbasin faces a regulatory threat in the State Water Resources Control Board's Bay-Delta Water Quality Control Plan. At current, the State Water Board proposes to repurpose up to 35 percent of unimpaired flows on the Tuolumne River (TID's sole source of surface water supply) for other uses in the Bay-Delta. Should this ultimately occur, the water budget for any adopted GSP has the potential to be gravely affected, and additional new challenges to groundwater management and groundwater sustainability within the Turlock Subbasin would certainly occur. While the Draft GSP Regulations address hydrological water supply reliability, they should also help local agencies understand what is to be expected of them regarding sustainable groundwater management planning when various regulatory surface water takings, surface water curtailments or court decisions occur, regardless of when they occur in GSP processes.

Suggestion for DWR: TID suggests DWR thoughtfully consider adding clarifying language in §354.18, or wherever DWR deems this discussion relevant in the Draft GSP Regulations, to address this concern. At

this time, it is difficult to suggest revised language, but my staff is willing to work with DWR at any point prior to the Commission's adoption of the regulations to include such language. A good start might be to consider the language of Water Code §10720.9, finding a way to expand this section of the regulations to account for the types of concerns illustrated in the discussion above.

Draft Regulation Reference: Several references in Subarticle 3 (Specifically §354.22, §354.24, §354.26, §354.28)

Comment: Several sections in Subarticle 3 describe what "each Agency" or "each Plan" shall do to comply with certain requirements of the Draft GSP Regulations. These phrases must be used consistently, as the phrases are not interchangeable. GSA governing bodies will adopt Plans and set GSA policies, but the GSAs themselves are not the specific subject of these regulations. GSPs will be the specific noun to which these regulations are applied, not GSAs. Granted, it is understood that GSAs will govern groundwater management locally and will have the responsibility of adopting and revising GSPs to submit to DWR.

Discussion: For example, §354.28 and several sections prior to it within Subarticle 3, discusses how "each Agency" will need to perform a task (in the specific instance here, to "establish minimum thresholds"), but later in §354.30 the Draft GSP Regulations state that "each Plan" shall include one or more measurable objectives for critical parameters. "Each Agency" and "each Plan" are not synonymous.

Suggestion for DWR: Because the Draft GSP Regulations describe regulations related to GSPs, we suggest omitting references to "each Agency" and placing "each Plan" in its place, unless DWR determines that specific references in the regulations (such as the reference in introductory paragraph of §354.34) need to be specifically aimed at Agencies taking the specific action stated in the regulations.

Draft Regulation Reference: §355.10 (a)

Comment: This section gives too much authority and responsibility to a coordinating agency, which is currently defined in the regulations as a single agency (see related comment regarding §351 (i) and the definition of "Coordinating agency")

Discussion: Giving a single agency authority and responsibility to resolve (sub)basin disputes is not needed. At several stages throughout the GSA and GSP processes, (sub)basin disputes and conflict are disincentivized by the deadlines of SGMA as well as the intervention role of the State Water Board.

Suggestion for DWR: We suggest amending the section to read, "Disputes within a basin shall be the responsibility of the entities responsible for managing Plans and alternatives within that basin."

Draft Regulation Reference: §357.4 et seq.

Comment: The term "Submitting Agency" is referenced multiple times in this section of the Draft GSP Regulations, though it is not defined in §351.

Discussion: In meetings with DWR, it is my understanding that the term "Coordinating agency" was meant to be used in this section instead of "Submitting Agency." Regardless, as mentioned earlier in this comment letter, the definition of "Coordinating agency" as well as the stated requirements, authorities and responsibilities of coordinating agencies needs further attention and revision if the Final GSP regulations are to be clear and workable for GSAs. To take the new powers granted to GSAs under

SGMA and attempt to refine yet-to-be-formed GSAs, yet-to-be designed GSPs and yet-to-be selected Plan managers into the pivotal, powerful and influential role of "Coordinating agency" is to invite, and perhaps incite, unnecessary and unneeded (sub)basin disagreements.

Suggestion for DWR: This section is unnecessary. A GSP or multiple GSPs will be submitted for each (sub)basin. Those GSPs, in turn, contain much of the information identified in §357.4. In addition, SGMA and the regulations require a coordination agreement which also contains the items identified in this section. This section then creates a "Submitting Agency" to basically duplicate the efforts of the GSPs and the coordination agreement. This section should read like §357.2 and recite what needs to be in the agreement. The contact referenced in §357.4 (b) should be the "Coordinating group" that we introduced in an earlier comment in this letter.

In closing

TID would like to again extend its appreciation to DWR's Sustainable Groundwater Management team, specifically citing the leadership of David Gutierrez, Trevor Joseph, Steven Springhorn and countless others at the Department.

It is my hope that you will give substantial consideration to these comments submitted by TID to the Department. Should DWR have questions or seek clarification of these comments, please contact Herb Smart (hssmart@tid.org or (209) 883-8448) or Debbie Liebersbach (dcliebersbach@tid.org or (209) 883-8428) of my staff, and they will be glad to assist you.

Sincerely,



Casey Hashimoto, P.E.
General Manager